

Amendment No. 1 to SB1597

Bowling  
Signature of Sponsor

**AMEND Senate Bill No. 1597**

**House Bill No. 1651\***

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 28-1-106, is amended by deleting the section and substituting instead the following:

(a) If the person entitled to commence an action is, at the time the cause of action accrued, either under eighteen (18) years of age, or proven to lack capacity, such person, or such person's representatives and privies, as the case may be, may commence the action, after removal of such incapacity, within the time of limitation for the particular cause of action, unless it exceeds three (3) years, and in that case within three (3) years from removal of such incapacity, except as provided for in subsection (b).

(b) Any individual with fiduciary responsibility towards a person who lacks capacity, or who possesses the legal right to bring suit on behalf of a person who lacks capacity, must commence the action on behalf of that person within the applicable statute of limitations and may not rely on any tolling of the statute of limitations, unless that individual can establish by clear and convincing evidence that the individual did not and could not reasonably have known of the accrued cause of action.

(c) Any person seeking to prove lack of capacity and the lack of a fiduciary or other representative who knew or reasonably could have known of the accrued cause of action shall have the burden of proving the existence of such facts.

(d) Nothing in this section shall affect or toll any statute of repose within this code.

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SECTION 2. This act shall take effect July 1, 2016, the public welfare requiring it. This act shall not apply retroactively and its application shall be limited to causes of action arising on or after the effective date.